

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 7TH MARCH 2007 / 16TH PHALGUNA 1928

Crl.Rev.Pet.No. 4440 of 2006(D)

AGAINST THE ORDER DATED 5.12.2006 NO.K.3244/2006 of
SUB DIVISIONAL MAGISTRATE, PALAKKAD
.....

REVN. PETITIONER:

1. KUNJAN, S/O. CHAMI,
THADANARA, ANAMARI, KOLLENGODE,
PALAKKAD.

2. VIJAYAN, S/O.MURUGAN,
THANDANARI, ANAMARI, DO. DO.

BY ADV. SRI.SURIN GEORGE IPE

RESPONDENTS:

1. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. M.A. SALAM, THANDANA LAKSHAM VEEDU
COLONY, ANAMARI POST, KOLLENGODE, PALAKKAD.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.A.ANITHA
PUBLIC PROSECUTOR C.M. KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 07/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.R.UDAYABHANU, J.

Crl. R. P. 4440 of 2006

Dated this the 7th day of March, 2007

ORDER

The revision petitioners, against whom the Sub Divisional Magistrate has issued a prohibitory order, not to obstruct the pathway, allegedly existing on the northern side of the pond owned by them, have sought for setting aside the order, on the ground that the provisions contained in sections 133 to 138 have not been complied with. It is against the revision petitioners that the complaint had been filed by the second respondent representing the residents of the Laksham Veedu Colony situated on the north eastern side of the pond. The 2nd respondent initiated these proceedings as a counterblast to the order passed by the Civil Court, to keep status quo with respect to the work being conducted to widen the path way on the southern side of the pond. The Sub Divisional Magistrate, after issuing notice to both sides to explain their respective case, and after calling for the reports from the Revenue Officer and Tahasildar, directed the revision petitioners, as mentioned above. It is the contention of the revision petitioners that Sub Divisional Magistrate is not specific as to under what

provision the order has been issued . It is the case of the revision petitioners that the order can only be in exercise of that power under Sections 133 to Section 138 Crl.PC . According to the 2nd respondent it is evident from the order, though the provisions are not specified, that the order is issued under Section 145, r/w 147 Crl.PC as it is mentioned in the reports of the Tahasildar and Village Officer as well as in the order of the Sub Divisional Magistrate, the existence of a likelihood of breach of peace in the locality and tense situation prevailing.

2. It is the case of the 2nd respondent that it is in consequence of the mass petition filed by the residents of the Laksham Veedu Colony, the Sub Divisional Magistrate initiated the proceedings. The records also show that such a mass petition was filed complaining against the blocking of pathway. According to the 2nd respondent the residents of the Laksham Veedu Colony were using the southern as well as the impugned pathway. But the use of the southern pathway has become impossible vide, the order of the Civil Court. According to him, the revision petitioners have fenced the eastern and western sides of the northern pathway after obtaining a prohibitory order with respect to the southern pathway.

3. Evidently the order of the Sub Divisional Magistrate shows that a tense situation is prevailing in the locality. The above finding is based on the report of Village Officer and the Tahasildar.

The contention of the revision petitioners is that they have not been provided with an opportunity to adduce evidence and the Sub Divisional Magistrate has issued the order solely relying on the reports of the Village Officer and Tahasildar .

4. I find that the Order of the Sub Divisional Magistrate did not mention the provision under which he had issued the order. The contention of the revision petitioners is also that they have not been given an opportunity to adduce evidence . The same is a matter that requires consideration.

5. In the circumstances the Order of the Sub Divisional Magistrate is set aside. The matter is remanded back to the Sub Divisional Magistrate, to reconsider the matter, affording opportunities to both sides to adduce evidence. In the meantime, the revision petitioners are directed not to obstruct pathway till Sub Divisional Magistrate decides the issue finally. The Sub Divisional Magistrate shall dispose of the matter at the earliest, at any rate, within four months from the date of receipt of this order. The revision petition is disposed of accordingly.

Handover copy of the order.

K.R.UDAYABHANU, JUDGE